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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 PERRY FAILING,

8 Plaintiff,

9 v.

10 WASHINGTON STATE LIQUOR
11 AND CANNABIS BOARD, an
12 administrative agency of the State of
13 Washington, and PATRICK
MATTHEWS, individually and as
employee and agent of Washington
State Liquor and Cannabis Board,

14 Defendants.

NO. 2:20-CV-0026-TOR

ORDER DENYING MOTION TO
REMAND

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16 BEFORE THE COURT is Plaintiff's Motion to Remand (ECF No. 6). This
17 matter was submitted for consideration without oral argument. The Court has
18 reviewed the record and files herein, the completed briefing and is fully informed.
19 For the reasons discussed below, Plaintiff's Motion to Remand (ECF No. 6) is
20 DENIED.

BACKGROUND

This case arises out of an investigation conducted by Defendants concerning an alleged illegal marijuana grow operation at Plaintiff's residence. On October 14, 2019, Plaintiff filed a Complaint in Spokane County Superior Court, asserting claims under both federal and state law. ECF No. 3 at 6-16. On October 18, 2019, a legal assistant to Plaintiff's counsel emailed the Washington Department of Enterprise Services ("DES"), stating "We have a Summons and Complaint for service on DES. I am looking for instructions as to how to complete this service." ECF No. 6-4 at 3. On October 21, 2019, a DES employee responded, saying that a "Risk Manager for the agency[] suggested you mail it to him." *Id.* DES is not a party to this suit. On October 21, 2019, Plaintiff personally served Defendant Patrick Matthews. ECF No. 6-3.

On October 24, 2019, DES received correspondence from Plaintiff's counsel's office, stating "I am forwarding this information to you to effect service upon the Department of Enterprise Services." ECF No. 8 at 2, ¶ 5; ECF No. 8-1. The correspondence contained a copy of the Complaint, a Case Assignment Sheet, and a Summons addressed to Defendant Washington State Liquor and Cannabis Board ("WSLCB"). ECF No. 8 at 2, ¶ 5. On October 25, 2019, DES forwarded this correspondence to a paralegal in the Attorney General's Office. *Id.*

1 On November 13, 2019, Defendants filed an Answer in state court. ECF No.
2 3 at 24-32. On January 16, 2020, Defendants removed the case to federal court.
3 ECF No. 2. On January 29, 2020, Plaintiff filed a “Response in Opposition to
4 Removal,” which this Court construes as a Motion to Remand. ECF No. 6.

5 DISCUSSION

6 Plaintiff moves to remand this case to state court on the grounds that
7 Defendants’ removal was untimely.¹ Specifically, Plaintiff argues the Notice of
8 Removal was filed more than 30 days after Defendant WSLCB received a copy of
9 the Complaint. ECF No. 6. The federal removal statute requires that “notice of
10 removal of a civil action or proceeding shall be filed within 30 days after the
11 receipt by the defendant, through service or otherwise, of a copy of the initial
12 pleading setting forth the claim for relief upon which such action or proceeding is
13 based” 28 U.S.C. § 1446(b)(1). Plaintiff argues that the plain language of the

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15 ¹ Plaintiff also challenges the assertion of federal diversity jurisdiction in
16 Defendants’ Notice of Removal. ECF No. 6 at 3; *see* ECF No. 2 at 3, ¶ 6.
17 Defendants concede that the citation to the diversity statute was in error and note
18 that the correct citation was to the federal question statute which was also included
19 in the Notice of Removal. ECF No. 7 at 9-10. In turn, Plaintiff concedes that his
20 Section 1983 claims properly support federal question jurisdiction. ECF No. 9 at 3.

1 statute means WSLCB's 30-day removal window began to run no later than
2 November 4, 2019, when counsel for Defendants entered an appearance in the
3 case, so the January 16, 2020 removal was untimely. ECF No. 6 at 4

4 "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian*
5 *Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). The removal statute has
6 historically been strictly construed against removal. *Shamrock Oil & Gas Corp. v.*
7 *Sheets*, 313 U.S. 100, 108 (1941). "[H]owever, more recent cases have softened
8 the strictness" of this principle. *Myer v. Nitetrain Coach Co., Inc.*, 459 F. Supp. 2d
9 1074, 1076 (W.D. Wash. 2006) (citing *Murphy Bros. Inc. v. Michetti Pipe*
10 *Stringing, Inc.*, 526 U.S. 344, 355 (1999)). Indeed, the Supreme Court has
11 interpreted the removal statute to mean "that a named defendant's time to remove
12 is triggered by the simultaneous service of the summons and complaint, or receipt
13 of the complaint, 'through service or otherwise,' after and apart from service of the
14 summons, but *not by mere receipt of the complaint* unattended by any formal
15 service." *Murphy Bros.*, 526 U.S. at 347-48 (emphasis added).² Service is
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17 ² Plaintiff's reliance on *Delgado v. Shell Oil, Inc.*, 231 F.3d 165, 177 (5th Cir.
18 2000) is misplaced in addition to not being binding on this Court. ECF No. 9 at 5-
19 6. Plaintiff's block quote from *Delgado* omits the footnote which explains that
20 *Delgado* addresses whether service is a prerequisite to the ability to remove a case,

1 required to start the 30-day removal window because “[a]n individual or entity
2 named as a defendant is not obliged to engage in litigation unless notified of the
3 action, and brought under a court’s authority, by formal process.” *Id.* at 347.

4 WSLCB contends its 30-day removal window has not yet run because it has
5 not been properly served. ECF No. 7 at 6-9. Washington law requires that actions
6 against the State of Washington be served “upon the attorney general, or by
7 leaving the summons and complaint in the office of the attorney general with an
8 assistant attorney general.” RCW § 4.92.020. Plaintiff argues that service was
9 accomplished when DES forwarded the Complaint and Summons from Plaintiff’s
10 counsel to the paralegal in the Attorney General’s Office, thereby “leaving the
11 summons and complaint” in compliance with the statute. ECF No. 9 at 4, n.3.
12 However, “[w]hen the legislature has acted reasonably in naming one person or
13 officer to have the responsibility for receiving service of process, service upon
14 anyone else is insufficient.” *Landreville v. Shoreline Cmty. Coll. Dist. No. 7*, 766
15 P.2d 1107, 1108 (Wash. Ct. App. 1988)); *see also Meadowdale Neighborhood*
16 *Comm. v. City of Edmonds*, 616 P.2d 1257, 1260 (Wash. Ct. App. 1980) (“When a
17 statute designates a particular person or officer upon whom service of process is to
18 _____
19 while *Murphy Bros.* addresses whether service is a prerequisite to start the running
20 of the 30-day removal clock. *Delgado*, 231 F.3d at 177, n.23.

1 be made ..., no other person or officer may be substituted.”). “Actual notice to the
2 State, standing alone, is not sufficient” to acquire jurisdiction over the State
3 without proper service. *Landreville*, 766 P.2d at 1108 (finding that leaving the
4 summons and complaint with an administrative assistant in the Attorney General’s
5 Office was insufficient under RCW § 4.92.020).

6 Here, state law is clear that service on WSLCB must be accomplished upon
7 the Attorney General or by leaving the summons and complaint in the Attorney
8 General’s Office with an Assistant Attorney General. RCW § 4.92.020. Plaintiff
9 has done neither. Instead, while this matter was pending in state court, Plaintiff
10 mailed³ a copy of the summons and complaint to DES, which forwarded the
11 documents by email to a paralegal in the Attorney General’s Office. Even if this
12 Court were to accept Plaintiff’s unsupported position that DES could effectuate
13 service on Plaintiff’s behalf, receipt by the paralegal is still insufficient under the
14 statute. *Landreville*, 766 P.2d at 1108. Additionally, the fact that WSLCB has had

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16 ³ The Court notes that Washington law only authorizes service by mail “by
17 court order on a case-by-case basis.” *In re Marriage of Maiers*, 163 Wash. App.
18 1015, at *3 (Aug. 23, 2011) (unpublished); *see also* 14 Wash. Prac., Civil
19 Procedure § 8:30 (3d ed.). There is no evidence that Plaintiff received such leave
20 in this case.

1 actual notice of this case is immaterial to the question of proper service. *Id.*

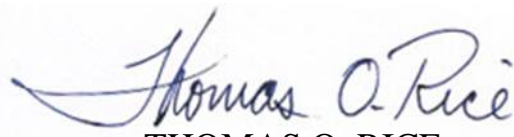
2 Because Plaintiff failed to comply with the statutory service requirements in this
3 case, WSLCB has not been properly served. Therefore, WSLCB's 30-day window
4 of removal has not begun to run under the federal statute. *Murphy Bros.*, 526 U.S.
5 at 347-48. Defendants' Notice of Removal was not untimely, and Plaintiff is not
6 entitled to remand on this ground.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 8 1. Plaintiff's Motion to Remand (ECF No. 6) is DENIED.
- 9 2. The District Court Executive is directed to enter this Order and furnish
10 copies to counsel.

11 **DATED** March 11, 2020.



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THOMAS O. RICE
14 Chief United States District Judge

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